Michael K. Jeanes, Clerk of Court
*** Filed ***
10/15/2014 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2014-000390-001 DT 10/14/2014

CLERK OF THE COURT
COMMISSIONER MYRA HARRIS J. Eaton
Deputy

UNIFUND C C R L L C
v.
TIMOTHY L DOYLE (001)

DAVID E HAMEROFF

JOHN N SKIBA

MCDOWELL MOUNTAIN JUSTICE COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case No. CC2013–198586.

Defendant-Appellant Timothy L. Doyle (Defendant) appeals the McDowell Mountain Justice Court's determination that granted Plaintiff Unifund CCR LLC summary judgment on a credit card debt. Defendant contends the trial court erred. For the reasons stated below, this Court affirms the trial court's judgment.

I. FACTUAL BACKGROUND.

On November 5, 2013, Plaintiff filed a Complaint alleging Citibank NA provided credit to Defendant; Defendant failed to make the payments it owed to Citibank; and Plaintiff had been assigned the account. Plaintiff claimed Defendant owed a principal balance of $8,627.87 plus interest of $1,559.59 and was entitled to accruing interest on the debt. Plaintiff requested court costs and reasonable attorneys' fees and notified the alleged debtor that the communication was from a debt collector. Defendant responded and denied these allegations.

Plaintiff filed a motion for summary judgment and claimed there were no material facts in controversy and the Plaintiff was entitled to judgment as a matter of law. Plaintiff asserted Arizona law provides for the assignment of contracts and credit card debt can be demonstrated by showing a Defendant used a credit card account. To support its requested summary judgment, Plaintiff provided a series of credit card statements—showing the first page of the monthly statement—from Citibank which indicated charges and payments to an account number with the last four digits 2555[1] in Defendant's name. The first statement indicated a payment due date of 12/15/08.[2] Plaintiff also included credit card statements with payment due dates from 1/13/09;

[1] Although the credit card statement indicated the complete account number, this Court will use the last four digits to identify the account in the interest of Defendant's privacy.
[2] The Court is using the "Payment Due Date" as its indication for the statement date as this date is readily observable on the various statements. These will be referred to as payment due date statements.

2/13/09; 3/16/09; and 4/14/09. The 4/14/09 payment due date statement included a notation the account was past due and included supplemental pages from the credit card statement. Plaintiff also included a copy of the 5/14/09 payment due date statement which again indicated the account was past due and showed additional charges to the account as well as a payment that was made on March 25. Plaintiff included copies of the June, July, August, and September payment due date statements, all of which included notices the account was past due. The June payment due date statement noted Defendant made a $300.00 payment on May 5. None of the other statements showed any payments after the May 5, 2009 payment. The September, 2009 payment due date statement stated the account was "seriously past due" and notified Defendant his credit privileges had been suspended. Plaintiff submitted copies of statements with payment due dates for the months of October, November and December which (1) indicated increasing balances based on finance charges; and (2) included notification about receiving help and special payment options. The balance due on the 11/17/09 payment due date statement was $8,424.81 and the balance due on the December payment due date statement was $8,627.87. The statement indicated it was sent to Defendant at an address on Bevely [sic.] Lane.

Plaintiff also provided a copy of a Bill of Sale and Assignment dated March 25, 2013, from Citibank to Pilot Receivables Management LLC. (Pilot) that included notice that Citibank had assigned its rights to the accounts "described in Exhibit 1 and the final electronic file"; a copy of an assignment between Pilot and Plaintiff; and a print-out showing an account with a balance of $8,424.81 as of November 9, 2009, with Plaintiff's name and address. The Assignment stated it was effective as of July 1, 2013, and referenced a servicing agreement between Pilot—the assignor—and Plaintiff—the assignee. The Assignment transferred Pilot's rights "for collection purposes only" and defined collection purposes as including litigation in Plaintiff's name for the receivables which Pilot owned or may acquire from time to time. The Assignment specifically stated Pilot retained title and ownership of the receivables.

Plaintiff also attached an Affidavit re Account ending in # 2555 from Daniel J. Fisher—an employee of Citibank, N.A. The Affidavit indicated (1) Mr. Fisher's job responsibility included reviewing and obtaining Citibank credit card account information; and (2) he made his affidavit based on his personal knowledge or his review of Citibank's business records. He stated he knew and had access to Citibank's records; the records were kept by Citibank in the regular course of Citibank's business; it was in the regular course of business for Citibank employees or representatives to make memoranda or records; and the records were made at or near the time of the act or event to be recorded. Mr. Fisher attested that a credit card account ending in account number 2555 was sold to Pilot Receivables Management on March 25, 2013, and Citibank prepared and forwarded to Pilot a spreadsheet that reflected the account information as of the date of the sale. He attested the spreadsheet indicated the account holder was Timothy L. Doyle; the account balance as of the date of the sale was $8,627.87; and the account information reflected the last payment posted was on May 5, 2009. Mr. Fisher's Affidavit was dated January 10, 2014. Plaintiff also included an affidavit from one of Plaintiff's authorized representatives—Elizabeth Meents—stating Plaintiff acquired Defendant's account and had forwarded this account to its legal representatives for purposes of collection, including the commencement of a lawsuit.

Defendant opposed the summary judgment motion but did not include any separate statement of facts. Instead, Defendant argued (1) the claim was barred by a three year statute of limitations; (2) Plaintiff's records violated the hearsay rule; (3) Plaintiff's Exhibit 4–the Elizabeth Meents Affidavit—was inadmissible; (4) Plaintiff did not establish any right to attorneys' fees; and (5) the information in the affidavit and Bill of Sale violated the hearsay rule.

Plaintiff replied to Defendant's response to the summary judgment and cited A.R.S. §12–548 which specifically allows a six year statute of limitations for credit card cases. Plaintiff cited A.R.S. §44–7801 *et seq*. a series of statutes specifically dealing with credit card indebtedness. Plaintiff referenced A.R.S. § 44–7804 which provides a creditor may establish the amount of debt owed on a credit card account via a copy of the issuer's final billing statement and asserted Plaintiff provided a copy of the Citibank charge-off statement. In addition, Plaintiff referred to A.R.S. § 12–341.01 for attorneys' fees. Plaintiff also addressed the business record exception to the hearsay rule and relied on *State v. Parker*, 231 Ariz. 391, 296 P.3d 63 ¶ 33 (2013) for the proposition that courts admit business records even when the witness testifying about these records did not assemble or compile the records. Plaintiff claimed that any claim about the lack of the affiant's personal knowledge goes to the weight to be afforded the evidence and not to its admissibility. Plaintiff also argued debt buyers are able to rely on the accuracy of the records that are provided since (1) the records are subject to federal regulation under the Fair Debt Collectors Practices Act, 15 U.S.C. § 1692(g); (2) banks are regulated by the Office of the Comptroller of Currency; and our Supreme Court in *Parker* held that "trustworthiness and reliability stem from the fact" that banks routinely rely on information from third parties in the ordinary course of their business. *Parker*, at ¶ 33.

The trial court issued judgment for Plaintiff on March 12, 2014. Defendant filed a timely appeal. Plaintiff filed a responsive memorandum. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUE: DID THE TRIAL COURT ERR BY GRANTING PLAINTIFF ITS REQUESTED SUMMARY JUDGMENT.

Introduction

Defendant, on appeal, claimed the trial court erred because Defendant did not prove it was the actual owner of the credit card debt and did not prove it was owed a specific dollar amount. In addition, Defendant claimed the trial court erred by considering the exhibits Plaintiff proffered and alleged these exhibits were inadmissible hearsay. Finally, Defendant claimed there was insufficient evidence to support the entry of judgment.

Standard of Review

Appellate courts review the granting of a summary judgment motion by giving the appellant(s) the benefit of all reasonable inferences which may be drawn from the record and viewing the evidence in the light most favorable to the party against whom the summary judgment was entered. Therefore, this Court must view the evidence in the light that most favors Defendant. *State ex rel. Corbin v. Sabel*, 138 Ariz. 253, 255, 674 P.2d 316, 318 (Ct. App. 1983). In addition, this court will only sustain a summary judgment if the record shows there was no

genuine dispute as to any material fact and the moving party—Plaintiff—was entitled to judgment as a matter of law. *Chanay v. Chittenden*, 115 Ariz. 32, 38, 563 P.2d 287, 293 (1977). The review is *de novo*. *Aranki v. RKP Investments, Inc*., 194 Ariz. 206, 979 P.2d 534, ¶ 6 (Ct. App. 1999); *Strojnik v. Gen. Ins. Co. of Am.*, 201 Ariz. 430, 36 P.3d 1200 ¶ 10 (Ct. App. 2001). As the Court of Appeals stated:

> Summary judgment should only be granted in cases where there is no genuine issue of material fact and the case may therefore be decided on the pleadings. We view the facts in the light most favorable to the non-moving party.

Kiley v. Jennings, Strouss & Salmon, 187 Ariz. 136, 139, 927 P.2d 796, 799 (Ct. App. 1996). (Citations omitted.)[3] Here, however, Defendant (1) presented no contradictory facts in its Response to Plaintiff's summary judgment motion; (2) failed to present any facts in its responsive motion; and (3) did not contest Plaintiff's facts. Additionally, Defendant presented no contradictory affidavits or exhibits. The first question is if Plaintiff presented sufficient facts to support its position.

Burden of Proof

Plaintiff had the burden of proof. As the Court of Appeals stated—after relying on the U.S. Supreme Court decision in *Celotex Corp. v. Cantrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986):

> The party seeking judgment bears the burden of satisfying this standard and demonstrating both the absence of any factual conflict and his or her right to judgment.

United Bank of Arizona v. Allyn, 167 Ariz. 191, 195, 805 P.2d 1012, 1016 (Ct. App. 1990). Accord, *Schwab v. Ames Constr.*, 207 Ariz. 56, 83 P.3d 56 ¶¶ 15–16 (Ct. App. 2004). The Court of Appeals held:

> Any evidence or reasonable inference contrary to the material facts-i.e., the facts which the moving party needs to show his entitlement to judgment-will preclude summary judgment. Mere speculation or insubstantial doubt as to the facts will not suffice, but where the evidence or inferences would permit a jury to resolve a material issue in favor of either party, summary judgment is improper.

United Bank of Arizona v. Allyn, id., 167 Ariz. at 195, 805 P.2d at 1016. Persuasively, A.R.C.P. allows the trial court to grant a summary judgment motion on grounds not raised by the party. Courts have the ability to examine the entire record. As the Arizona Supreme Court stated:

> Summary judgment should not be granted if, on examination of the entire record, there are any disputed fact questions which, if resolved adversely to the moving party, could affect the final judgment.

[3] Pursuant to JCRCP, Rule 101(d), case law interpreting the A.R.C.P is generally authoritative in interpreting the JCRCP.

Krumtum v. Burton, 111 Ariz. 448, 451, 532 P.2d 510, 513 (1975). Accord, *Sarti v. Udall*, 91 Ariz. 24, 25, 369 P.2d 92, 93 (1962). The rationale behind examining the entire record is to afford litigants a trial where there is doubt as to the facts. *Peterson v. Valley Nat. Bank of Arizona*, 90 Ariz. 361, 362, 368 P.2d 317, 318 (1962). Thus, this Court must review the summary judgment to determine—*de novo*—if Plaintiff, by a preponderance of the evidence, demonstrated (1) no material facts in controversy; and (2) its entitlement to judgment as a matter of law. This Court has reviewed the entire file.

Plaintiff as Account Owner

Plaintiff established Defendant opened a credit card account with Citibank by submitting copies of credit card statements detailing Defendant's name and address and indicating the transactions that occurred throughout 2009. All of these statements related to an account with the final four digits of 2555. In addition, Plaintiff also demonstrated Citibank sold this account to Pilot on or about 3/25/2013, and supported this sale with the Daniel J. Fisher Affidavit which referred to the sale. Mr. Fisher's Affidavit specifically referenced the Defendant's account and reflected that the credit card account ending in account number 2555 was sold and Citibank prepared and forwarded to Pilot a spreadsheet that reflected the information about this account. Mr. Fisher, after reviewing Citibank's records, stated the spreadsheet included account information for this account and as of the date the account was sold—March 25, 2013,—the balance due and payable on the account was $8,627.87. In addition, Plaintiff provided a copy of the Bill of Sale and Assignment dated March 25, 2013, from Citibank to Pilot transferring the account to Pilot.

Plaintiff also provided a copy of the Assignment dated July 1, 2013, between Pilot and Plaintiff which indicated it assigned to Plaintiff "all of Assignor's rights in the Receivables, for collection purposes only" in "those Receivables which Assignor owns or may acquire from time to time." Because the assignment was limited, and only assigned the right to collect the receivables, but not the ownership of the receivables, Plaintiff provided a trail of ownership.

Assignees have the right to collect on credit card debt. Persuasively, the Texas Court of Appeals[4] held:

> Unifund Partners' petition, subsequent responses to Eaves' motions for summary judgment, and evidence presented at trial alleged that it was the present owner and holder of Eaves' account and was entitled to sue to collect the debt. The bill of sale from Citibank to Unifund Portfolio conveyed good and marketable title to the account, and more importantly, Unifund Portfolio expressly assigned the rights to collect on the account, including litigation, to Unifund Partners. Based on this evidence, we find Unifund Partners had standing to sue to collect the debt.

[4] Our Arizona Supreme Court recognized decisions from our sister states are generally applicable and held: "As a matter of fact most of the jurisdictions of this country already take judicial notice of the laws of its sister states"; *Prudential Ins. Co. of Am. v. O'Grady*, 97 Ariz. 9, 12, 396 P.2d 246, 248 (1964); and "We therefore hold that the constitution, statutes and reported court decisions of our sister states are a proper subject for judicial notice." *Prudential Ins. Co. of Am., id.*, 97 Ariz. at 13–14.

Eaves v. Unifund CCR Partners, 301 S.W.3d 402, 404-05 (Tex. App. 2009). Similarly, the Wisconsin Court of Appeals allowed the assignee—Central Prairie—to pursue a credit card debt based on a credit card issued by Chase. The Wisconsin Court of Appeals stated:

> Our examination of the record shows that Central Prairie has submitted evidence of an unambiguous contract between Chase and Yang establishing Yang's credit card account and the valid assignment of Chase's contract rights to Central Prairie.

Cent. Prairie Fin. LLC v. Doa Yang, 2013 WI App 82, 348 Wis. 2d 583, 833 N.W.2d 866, ¶ 7 (Ct. App. 2013). The Superior Court of New Jersey, Appellate Division also found an assignee could bring an action to recover on a credit card debt and held:

> Plaintiffs suing on assigned, charged-off credit card debts must prove two things: ownership of the defendant's charged-off debt and the amount due the card issuer when it charged off the account. In considering whether plaintiffs established prima facie proof of their claims, we hold that: lack of notice to the debtor of the sale of the debt does not affect the validity of the assignment; the assignment need not specifically reference defendant's name or account number and instead may refer to an electronic data file containing that information; a plaintiff need not procure an affidavit from each transferor in its chain of assignments and may instead establish prima facie proof of ownership on the basis of business records documenting its ownership; and that an electronic copy of the periodic billing statement for the last billing cycle is prima facie proof of the amount due on the account at charge off.

New Century Fin. Servs., Inc. v. Oughla, A-6078-11T4, 2014 WL 4290328, __ A.3d__ (N.J. Super. Ct. App. Div. Mar. 5, 2014). Defendant's first claim that Plaintiff failed to prove it was the appropriate party is without merit since Plaintiff demonstrated (1) Pilot owned the account as a result of the Bill of Sale; and (2) it had the right to sue on Pilot's behalf based on the July 1, 2013, Assignment. Additionally, both an assignor and an assignee have the right to institute a lawsuit. As the U.S. Supreme Court stated:

> The courts recognized that pre-existing law permitted an assignor to bring suit on a claim even though the assignor retained nothing more than naked legal title. Since the law increasingly permitted the transfer of legal title to an assignee, courts agreed that assignor and assignee should be treated alike in this respect. And rather than abolish the assignor's well-established right to sue on the basis of naked legal title alone, many courts instead *extended the same right to an assignee*. See, *e.g.*, Clark & Hutchins, The Real Party in Interest, 34 Yale L.J. 259, 264–265 (1925) (noting that the changes in the law permitted both the assignee with "naked legal title" and the assignee with an equitable interest in a claim to bring suit).

Sprint Commc'ns Co., L.P. v. APCC Servs., Inc., 554 U.S. 269, 279-80, 128 S. Ct. 2531, 2538, 171 L. Ed. 2d 424 (2008). The U.S. Supreme Court added:

> Even this court long ago indicated that assignees for collection only can properly bring suit.

Sprint Commc'ns Co., id., 554 U.S. at 283, 128 S. Ct. at 2540; and:

> The history and precedents that we have summarized make clear that courts have long found ways to allow assignees to bring suit; that where assignment is at issue, courts—both before and after the founding—have always permitted the party with legal title alone to bring suit; and that there is a strong tradition specifically of suits by assignees for collection. We find this history and precedent "well nigh conclusive" in respect to the issue before us: Lawsuits by assignees, including assignees for collection only, are "cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process."

Sprint Commc'ns Co., id., 554 U.S. at 285, 128 S. Ct. at 2541-42.

The Specific Dollar Amount

Defendant also challenged Plaintiff's ability to demonstrate Defendant owed a specific dollar amount and show how the amount was calculated. However, the credit card statements issued with Defendant's name and address and showing his ending account number provided substantiation for the amount owed and allowed the trier of fact to trace the increasing amount of debt Defendant incurred. The December 2009 statement indicated the principal amount which Plaintiff claimed. A.R.S. §44–7804 provides:

> In an uncontested court action in this state a creditor may establish the amount of the debt that is owed on a credit card account through a copy of the issuer's final billing statement or by the electronic record pursuant to § 44-7007 that is maintained by the issuer and that represents the amount owed. In contested actions the court shall weigh the evidence of the parties as required by law.

While Defendant disputed the amount claimed in Defendant's response, Defendant did not provide any evidence contradicting Plaintiff's claim. Even if the presentation of these credit card statements did not establish the amount of debt owed—which this Court does not necessarily find—the credit card statements provided evidence of the amount owed. Defendant did nothing to challenge this evidence and presented no evidence of his own. Plaintiff supported its claim with these credit card statements as well as with the Daniel Fisher Affidavit where Mr. Fisher (1) described his duties with Citibank—the original creditor; (2) stated he was authorized to make the statements within the affidavit; (3) maintained he had knowledge of and access to the records for Citibank; (4) asserted the records were made at or near the time of the act or event recorded or reasonably soon thereafter; and (5) listed the amount owed as the same amount Plaintiff claimed.

A defendant must do more than simply deny a Plaintiff's claim in order to defeat that claim. Defendant has yet to allege any material facts in controversy—even in his appellate memorandum. As our Supreme Court stated:

> Where facts are set forth in support of the motion which are not controverted by the opposing party, they are presumed to be true because, while the burden is on the movant, the opposing party cannot fail to urge his argument.

Watts v. Hogan, 111 Ariz. 536, 538, 534 P.2d 741, 743 (1975). Defendant did not show there were any genuine factual issues for trial and did not challenge the evidence Plaintiff proffered. Plaintiff's burden was to demonstrate its claim by a preponderance of the evidence. Because all of the evidence indicated Defendant owed the amount Plaintiff claimed, Plaintiff met this burden and Defendant's second claim fails.

Admission of Exhibits 2, 3, and 4

Defendant alleged the trial court erred by considering the assignment of accounts between Pilot and Plaintiff because the assignment did not specifically reference the accounts which were transferred, but, instead, referred to the accounts which "Assignor owns or may acquire from time to time." Plaintiff claimed this provided insufficient foundation to meet the business record exception to the hearsay rule. To controvert this allegation, Plaintiff responded the assignment of the receivables was for "collection purposes only" and that Pilot retained the title and ownership to the accounts. This Court addressed the right of an assignee to bring a claim in a preceding section. Because Plaintiff established the credit card debt through the Fisher Affidavit and the credit card statements, and also demonstrated the relationship between Pilot and Plaintiff, the trial court did not err by admitting the proffered documents.

The credit card statements were admissible. Mr. Fisher described that these records were created at or near the time the records were created. Mr. Fisher was a qualified witness—a person with knowledge. As the Seventh Circuit Court of appeals stated:

> Rather, the phrase "other qualified witness" in Rule 803(6) is to be given "the broadest possible interpretation"-the witness need only be someone who "understands the system". . . . In sum, a "qualified witness" need only be someone with knowledge of the procedures governing the creation and maintenance of the type of records sought to be admitted; and this requirement was met here.

United States v. Keplinger, 776 F.2d 678, 693 (7th Cir. 1985). Accord, *United States v. Console*, 13 F.3d 641, 657 (3rd Cir. 1993) where the Third Circuit held:

> We have recognized that the term "other qualified witness" should be construed broadly, and that a qualified witness " 'need not be an employee of the [record-keeping] entity so long as he understands the system.' " Thus, a qualified witness only need "have familiarity with the record-keeping system" and the ability to attest to the foundational requirements of Rule 803(6).

See also *U.S. v. Lauersen*, 348 F.3d 329, 342 (2nd Cir. 2003) holding:

> The term, custodian or other qualified witness, in Rules 803(6) and 902(11) is generally given to a very broad interpretation. The witness need only have enough familiarity with the record-keeping system of the business in question to explain how the record came into existence in the ordinary course of business.

Mr. Fisher attested he worked for Citibank and his job responsibilities included (1) reviewing; and (2) obtaining account information; as it related to credit card accounts owned by or previously owned by Citibank. The credit card accounts in this dispute were originally owned by Citibank. Mr. Fisher also attested his statements were true and correct and were based on either his personal knowledge or his review of Citibank's business records. He claimed the records were kept by Citibank in the regular course of business; it was in the regular course of business

for a Citibank employee or representative with personal knowledge to make the records; and the records were made at or near the time of the act. Mr. Fisher then wrote about Defendant's Citibank credit card account. He stated Defendant's account, ending in number 2555, had been sold to Pilot and, at the time it was sold, Citibank prepared a spreadsheet reflecting the account information. He stated the amount due as of the date of the sale; and the last date of payment on the account. Although Defendant claimed Mr. Fisher couldn't/didn't testify about Citibank's business practices or whether the documents were kept in the regular course of Citibank's business, that statement was belied by Mr. Fisher's Affidavit. This Court finds Mr. Fisher's Affidavit provided the needed degree of reliability to allow the credit card statements to be admitted as business records.

As early as 1927, Judge Learned Hand wrote about the need for the broadened admissibility of business records. He wrote:

> The routine of modern affairs, mercantile, financial and industrial, is conducted with so extreme a division of labor that the transactions cannot be proved at first hand without the concurrence of persons, each of whom can contribute no more than a slight part, and that part not dependent on his memory of the event. Records, and records alone, are their adequate repository, and are in practice accepted as accurate upon the faith of the routine itself, and of the self-consistency of their contents. Unless they can be used in court without the task of calling those who at all stages had a part in the transactions recorded, nobody need ever pay a debt, if only his creditor does a large enough business. That there should not be checks and assurances of veracity we do not suggest; it is indeed possible to expose adversaries to genuine danger, but to continue a system of rules, originally designed to relieve small shopkeepers from their incompetence as witnesses, into present day transactions is to cook the egg by burning down the house.

Massachusetts Bonding & Ins. Co. v. Norwich Pharmacal Co., 18 F.2d 934, 937 (2d Cir. 1927).

Sufficiency of the Evidence

Defendant challenged Plaintiff's evidence as being insufficient to establish the amount owed. In addressing the question of sufficiency of the evidence, the Arizona Supreme Court said the following:

> We review a sufficiency of the evidence claim by determining "whether substantial evidence supports the jury's finding, viewing the facts in the light most favorable to sustaining the jury verdict." Substantial evidence is proof that "reasonable persons could accept as adequate . . . to support a conclusion of defendant's guilt beyond a reasonable doubt." We resolve any conflicting evidence "in favor of sustaining the verdict."

State v. Bearup, 221 Ariz. 163, 211 P.3d 684 ¶ 16 (2009) (citations omitted). Plaintiff provided documentation establishing the credit card debt. A.R.S. § 44–7804 allows a creditor to establish the amount of the debt on a credit card account by providing a copy of the final billing statement or electronic record. As previously stated, these records were admissible. A.R.S. § 44–7804 provides that if the action is contested, the court is to weigh the evidence. Here, the only evidence is the evidence which Plaintiff provided. Plaintiff met the substantial evidence test.

III. CONCLUSION.

Based on the foregoing, this Court concludes the McDowell Mountain Justice Court did not err.

IT IS THEREFORE ORDERED affirming the judgment of the McDowell Mountain Justice Court.

IT IS FURTHER ORDERED remanding this matter to the McDowell Mountain Justice Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Myra Harris
THE HON. MYRA HARRIS
Judicial Officer of the Superior Court 101420141554

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.